

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5198 of 1982

Date of decision: 06-09-96

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GOVINDBHAI ARJANBHAI

Versus

GUJARAT PANCHAYAT SERVICE SELECTION COMMISSION

Appearance:

MR MD RANA for Petitioner
MR. H.L. Jani for Respondent No. 1
None present for other respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/09/96

ORAL JUDGEMENT

Heard Mr. Rana, learned counsel for the petitioner, and perused the record.

The petitioner, a junior clerk/typist working in the office of the District Panchayat, Junagadh, filed this petition making following prayers:

"(A) A writ of certiorari or any other appropriate quashing and setting aside the order of respondent authority dated 18-12-1965 at annexure 'G', and another order of respondent authority dated 12th March, 1973 at annexure 'L' and also setting aside and quashing order dated 22-4-1982 and 28-5-1982 at annexure 'O' and 'A'.

(B) A writ of mandamus or any other appropriate

directing respondent authority to hold the petitioner continuously in service and to regularise his case and further direct to assign him the proper seniority with reference to his original date of appointment from 26-4-1965 under order dated 15-4-1965 and also to include him in the seniority list on this basis and further grant all consequential benefits including promotion which would have accrued to him if his applications were not rejected, and direction be issued to grant the selection grade to the petitioner.

The petitioner was appointed in the office of the District Panchayat, Junagadh, on 26th April, 1965. His appointment was subject to recommendation of the Selection by the Gujarat Panchayat Service Selection Committee. It is not in dispute that the day on which the petitioner was appointed initially he was overaged. Annexure-G is the letter of the District Panchayat, Junagadh. Ex Officio Secretary, District Panchayat Service Selection Committee informed the petitioner that he cannot be called for interview for selection as he is age-barred. This is the first order which has been challenged by the petitioner in this special civil application. Under order dated 30th March 1976 annexure-H at page 21 services of the petitioner were terminated as he has not been selected by the District Panchayat Selection Committee. The petitioner has challenged the order annexure-L dated 12-3-1973 under which he was not called for selection by the Gujarat Panchayat Service Selection Committee as he was over-aged. Annexure-A is another order which has been challenged by the petitioner under which the application of the petitioner for regularisation of his services has been rejected. The last order is annexure-O dated 22-4-1982 under which the application of the petitioner had been rejected for selection on the ground that he is age barred.

2. The appointment of the petitioner was bad in law

as he was age-barred on the date when he was appointed initially. The petitioner entered in service through back door entry and the very fact that an age-barred person has been appointed itself shows that he had some favour from some corner of the District Panchayat, Junagadh. His services were terminated way back in the year 1966 but he still continued in service. Nothing has been produced on record how the petitioner was continued in service. The counsel for the petitioner, by referring to the document of the District Development Officer dated 1-12-1967 (at page 37) contended that under the said order, the order dated 30th March, 1966 was kept in abeyance, but it appears to be incorrect. I have taken translated version of this document from the petitioner's counsel and it makes reference to the order of termination of service of the petitioner of 1967. Under the order of November 1967 services of the petitioner were terminated and the same has been kept in abeyance till 1-12-1967 and thereafter it was extended till the petitioner has faced the selection before the Gujarat Panchayat Service Selection Committee. From the reading of these two documents the only inference which could be drawn is that after 30th June 1966 the petitioner would have again manipulated his appointment and that again had come to an end in November 1967. How the appointment thereafter continued is a matter to be noted. The petitioner has some force behind him and that is how he has managed the affairs to continue in service.

3. The petitioner has not given out how the averments made by him that he continued in service without break from the date of initial appointment is correct. On the other hand, as stated earlier, his services were terminated on 30th March, 1966. The petitioner has not stated whether after December 1967 selections were held by the Board. Under letter dated 24th April 1982 the petitioner was informed that he cannot be directly absorbed in service by the Panchayat Service Selection Committee and that he may appear for the test as and when the same is advertised. This letter has been written in reference to the representation of the petitioner dated 10-2-1978. The decision has been taken by the Committee on 17-12-1981. This order is challenged by the petitioner, but the counsel for the petitioner is unable to point out any illegality therein. It is a case where the petitioner's initial appointment itself was bad and he has manipulated the things to continue in service. There is no question of regularisation of an appointment which was bad since inception. Learned counsel for the petitioner has failed to point out any provision from the Panchayats Act or any

provision from the Rules framed thereunder which permits regularisation of services of such a class of person.

4. The counsel for the petitioner then urged that the petitioner continued in service for years. He has been given grade increments also. He has also passed departmental examination and as such writ of mandamus should be issued to the respondents to regularise his service. This contention of the learned counsel for the petitioner is devoid of any substance. Writ of mandamus can be issued by this court only when the petitioner has some legal right of regularisation which, as stated earlier, counsel for the petitioner is unable to make out. In case such a writ is issued, then this court will be compelling the respondents to regularise the services of the petitioner de hors the rules and consequentially this court will be compelling to continue a person in service who had entered in service by back door and who was over aged at the time of appointment. Lastly, the learned counsel for the petitioner contended that sympathetic view should be taken as the petitioner has worked for all these years and he is going to be retired within a short period. These considerations cannot be applied to each and every case. Though some time there may be hard cases but normally this court should not create bad precedence. If such a situation prevails then the court will give encouragement to persons to get entry in service through back door, manipulate or manoeuvre his continuance in service and ultimately come before this court for relief of regularisation in service. In the document annexure-A the District Panchayat has made the position explicitly clear and no question would arise for regularisation unless the petitioner passes through the selection process.

5. Lastly the counsel for the petitioner contended that the Panchayat has continued the petitioner in service for all these years and as such his services maybe regularised as otherwise he will be deprived of pension and other retirement benefits. It is true that the panchayat has continued him in service, but that was also illegal action of the panchayat. Once the petitioner was found to be not eligible for appointment as he was age-barred at the time of appointment, his services should have been terminated. It has been done in this case also, but thereafter he was continued in service. It is a case where the salary which has been paid to the petitioner for all these years should be recovered from the officers of the District Panchayat who have continued him in service. But that exercise may not be feasible and proper at this stage as many of the

officers would have retired from service. But the petitioner cannot be allowed to reap further benefits. He has worked for all these years and he has been paid salary. His appointment was bad. His entry in service was bad. He can not be given further benefit of pension and other retirement benefits. If these benefits are given to such a person he would be getting premium for his entry in service through back door which was not permissible. This court will not grant such a writ in favour of the petitioner under Article 226 of the Constitution of India. This court has to protect the rights of persons who are regularly appointed or who are bona fide persons, but not of the persons who manipulate things for his own benefits.

6. There is no substance in the petition. Special Civil Application is dismissed. Rule discharged. Ad interim relief granted earlier stands vacated. No order as to costs.

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